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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,741	12/05/2003	Jan Lewandowski	34968US3	1343
116	7590	12/13/2005	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			JAWORSKI, FRANCIS J	
			ART UNIT	PAPER NUMBER
			3737	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/729,741		LEWANDOWSKI, JAN	
	Examiner		Art Unit	
	Jaworski Francis J.		3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7-2-04IDS, 8/15/05 Amdt.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 and 31-34 is/are allowed.
- 6) ☒ Claim(s) 14, 15, 23, 24 and 35-42 is/are rejected.
- 7) ☒ Claim(s) 16-22 and 25-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7-2-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 35-36, 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Jenkins et al (US6126614) which teaches a method of detecting middle ear effusion i.e. the accumulation of fluid in the middle ear, see col. 1 lines 50-63 establishing field of endeavor, the method including providing a probe with plural transducers (under one interpretation 20, 28 associated with the reflectometry per se; under another interpretation embracing the transducers 31, 32 as well (the distinction between transducer and sensor is that strictly the former requires a transduction hence all of 20,28,31-32 are transducers), interacting the probe of fig. 8 with the ear while operating these transducers, and determining the existence of an ear disorder as per Figs. 13 – 18 without using ear imaging.

Less than all the transducers may be used, for example the temperature may be measured elsewhere on the body and/or the ear canal temperature sensor may be simply used for aligning the reflectometer towards the tympanic membrane so as to determine that the other transducers are properly directed, see cols. 4 – 5 bridging.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 –15, 23 - 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seward (US6398736) in view of Newman et al (US6631287). Seward teaches using a curved array ultrasound probe (col.4 lines 26-28, col. 9 lines 25 – 40) for parametric investigation inter alia of the ear, whereupon since Seward discusses identifying a temperature hotspot in this fashion,(col.2lines 50-54) it would have been obvious in view of Newman et al to collapse the parametric reading to a single-valued epi-center or hotspot for thresholding for declaring infection to be present. Sequential operation is implicit in phasing delays and scanning of the array beam around array curvatures. .

Claims 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins et al as argued above, further in view of Newman et al (US6631387) insofar as the latter teaches that array information such as an IR thermoscanning result may be presented as a single transducer 'hotspot' output of the highest value measurement, see Fig. 9, and array 44 has a curved perimeter 42.

Allowable Subject Matter

Claims 1 – 13, 31 - 34 as amended allowed.

Claims 16 – 22, 25 –30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Newman et al (US20030171655) is cited as of interest as also teaching the otologic use of an IR transmitting and receiving array.

Thornton (US5546956) is cited as of interest in using an acoustic reflectometry array as per Fig. 5.

Copending S.N. 10/729,199 was reviewed for potential claims' conflict with this application. Bessler (US20040167404) is cited as of interest as topic-related to the contents of that application.


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jaworski Francis J. at telephone number 571-272-4738.



Francis J. Jaworski
Primary Examiner

FJJ:fjj

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